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June 21, 2006

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Honorable Joseph J. Farnan, Jr.
United District Court for the
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Re: RLI Insurance Company v. Indian River School District, et al.
United District Court for the District of Delaware
Civil Action No. 1:05-cv-00858-JJF
Our File No. 729.004

Dear Judge Farnan:

This firm represents Plaintiff RLI Insurance Company in connection with the above-referenced matter wherein Motions for Dismissal have been filed by the Defendants and are currently pending before Your Honor. This office is in receipt of a June 12, 2006 letter from counsel for Defendants enclosing a recent case of *Millsboro Fire Company v. Construction Management Services, Inc.*, a copy of which I enclose for Your Honor's reference. While counsel for Defendants is correct in quoting the opinion of the Court as holding "the provision of plans and design drawings used to construct the project do not constitute the business of supplying information," that decision fails to address specifically the negligent inspection and approval of payment applications of the contractor. On this point it is of paramount significance that a design professional or a contract manager need not undertake inspection and approval responsibilities on behalf of an owner. Indeed, such services are more aptly characterized as consulting services and are separate and distinct from an architect's preparation of plans and specifications, and a construction manager's activities. Accordingly, these consulting activities are for the specific purpose of providing information, and are not incidental and/or necessary to the architect's traditional function. As set forth in RLI Insurance Company's Memorandum of Law, any party reviewing and approving payment applications in connection with a construction project understands that these applications are not only relied upon by the owner in relation to contract balances but also the Surety and any lending institution involved in a project. Such information is utilized by these parties for purposes of making decisions to act upon and/or protect security interests in the ongoing construction. Thus, the *Millsboro Fire Company* case

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does not squarely address the inspection and approval functions undertaken by the architect and the construction management company in the present case. To be clear, the Surety's complaint in the instant action is addressed to these separate and distinct consulting services and not on "the provision of plans and design drawings used to construction the project."

Your Honor's consideration of the above is greatly appreciated.

Respectfully submitted,

/s/ John E. Hilser
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JEH/erl
Enclosure

cc: **Via First Class Mail, w/o encl:**
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